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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

HP TUNERS, LLC, a Nevada limited liability
company,

Plaintiff,

vs.

KENNETH CANNATA,

Defendant.

Case No. 3:18-cv-00527-LRH-WGC

**PLAINTIFF'S OPPOSITION TO
DEFENDANT KENNETH CANNATA'S
MOTION TO EXTEND LIMITED
DISCOVERY DEADLINES**

Plaintiff HP TUNERS, LLC, a Nevada limited liability company ("HPT" or "Plaintiff"), by its attorneys, Andrew P. Bleiman, Esq., MARKS & KLEIN, and Cecilia Lee, Esq. and Elizabeth High, Esq., LEE HIGH, LTD. as local counsel, hereby submits its opposition to the motion to extend limited discovery deadlines, fourth request ("Motion" or "Motion to Extend"), filed by Defendant Kenneth Cannata ("Cannata" or "Defendant") (Dkt. 101)

INTRODUCTION

Defendant is seeking a fourth request for an extension of time for discovery. Discovery

1 has already been extended three times pursuant to Federal Rule of Civil Procedure 16(b)(4) and
 2 applicable local rules. *See* Fed. R. Civ. P. 16(b)(4), LCR 26-1, 26-4, IA 6-1. On December 15,
 3 2020, following the third request, this Court stated as follows in its Order Granting Joint Motion
 4 to Modify Scheduling Order (Dkt. 84):

- 5 • At this time, the Parties do not anticipate that further extensions of the schedule
- 6 will be necessary; and,
- 7 • **There shall be no further extensions granted barring unforeseen and**
- 8 **extenuating circumstances.**

9 (Dkt. 84, at 4)

10 No unforeseen or extenuating circumstances have occurred since the above-referenced
 11 Court Order, and the Parties' then current representation that further extensions would not be
 12 necessary remains unchanged. Nothing unforeseen has transpired in the interim period between
 13 the two requests. Rather, Defendant Cannata manufactures purportedly new developments as
 14 cover for his failure to previously pursue discovery under the Court's previous scheduling, as
 15 graciously extended three (3) times. No issues in this case have ever changed from the outset.
 16 And nothing whatsoever has prohibited or hindered Cannata from seeking any discovery from
 17 HPT at any time, specifically over at least the past year. Insofar as Cannata has neglected to do so
 18 by his own volition, he should not be rewarded at the eleventh hour.

19 ARGUMENT

20 **THERE IS NO GOOD CAUSE, NOR ANY UNFORSEEN OR EXTENUATING** 21 **CIRCUMSTANCES, TO SUPPORT EXTENDING THE TIME FOR DISCOVERY**

22 A schedule may be modified only for good cause and with the judge's consent. Fed. R.
 23 Civ. P. 16(b)(4). And, for good cause shown, this Court has granted three (3) prior extensions
 24 with the latest having been on December 15, 2020. (Dkt. 84; *see also* Dkts. 47, 64). At that time,
 25 the Court noted that the impact of Covid-19 on party and nonparty availability, combined with the
 26 holidays, comprised good cause to extend all discovery until March 31, 2021. (Dkt. 84, at 3). The
 27 Court emphasized that **“there shall be no further extensions granted barring unforeseen and**

1 **extenuating circumstances**". (Id, at 4). Defendant Cannata now asserts that such circumstances
 2 exist because it was unforeseen that Plaintiff would allegedly "assert boilerplate objections and
 3 resist discovery in the manner it has." (Dkt. 101, at 3, ¶8). A review of the chronology is
 4 instructive. Moreover, contrary to Defendant's claims, Plaintiff has not asserted boilerplate
 5 objections or resisted discovery in any manner whatsoever.

6 Defendant Cannata filed his answer on August 29, 2019. (Dkt. 45). Over three (3) months
 7 *earlier*, on May 6, 2019, Cannata served on HPT his First Set of Interrogatories and First Set of
 8 Requests for Production of Documents. HPT served responses to both on June 1, 2019. No claims
 9 or issues in this case have ever changed since these initial pleadings and discovery.

10 After the passage of seven (7) months from Defendant's receipt of Plaintiff's answers and
 11 responses, Cannata's counsel wrote a letter on January 3, 2020 to HPT's counsel under the header
 12 "Request For Supplemental Discovery Responses" which took issue with HPT's June, 2019
 13 discovery responses, and requesting that HPT "provide supplemental responses addressing the
 14 deficiencies discussed herein and provide responsive documents on or before Friday, January 17,
 15 2020. If these issues are not resolved, Mr. Cannata will be forced to file a Motion to Compel." (A
 16 copy of Cannata's counsel's letter dated January 3, 2020 is attached hereto as Exhibit A). Similar
 17 to the present Motion, Cannata's counsel alleged that "the majority of Plaintiffs Responses to
 18 Defendant's First Set of Interrogatories consisted only of boilerplate objections and constitute non-
 19 answers." *Compare* Exhibit A with Motion. Counsel for both parties conferred about the alleged
 20 discrepancies in HPT's responses and resolved any issues in alleged dispute. Defendant Cannata
 21 never brought any motion to compel.

22 Mr. Cannata states that on March 3, 2020, he suffered a medical emergency that required
 23 hospitalization and left him unable to materially participate in the case for several months. (Dkt.
 24 87¹, ¶24). Although this may conceivably have hindered Cannata's personal ability to answer
 25 discovery or attend depositions, it would have had no bearing whatsoever on counsel's ability to
 26

27 ¹ Dkt. 87 is the Declaration of Kenneth Cannata in Support of Opposition to Plaintiff's Motion for Prejudgment Writ of Attachment.

1 serve supplemental discovery on HPT or move to compel vis-à-vis allegedly inadequate responses.
 2 That did not happen. By December 15, 2020, Cannata attested that he was fully recovered from
 3 his medical emergency, no longer on medication or limitations, and fully in control of his finances
 4 and affairs. (Id, at ¶¶25-26). The Court concurred. (Dkt. 92, at 2-3). Nevertheless, it was at this
 5 time that the Court granted the parties their third modification of the scheduling order to extend
 6 discovery. (Dkt. 84).

7 On January 8, 2021, over three weeks after the above-referenced third extension of the
 8 discovery cutoff, *more than a year after* Cannata's last demand for HPT to supplement discovery
 9 responses and less than 3 months before the discovery cutoff, Cannata served upon HPT a Second
 10 Set of Interrogatories and Second Set of Requests for Production of Documents. *See* Exhibit B².
 11 This "supplemental discovery" propounded an additional 10 interrogatories and 78 requests for
 12 production on Plaintiff HPT – the overwhelming majority of such discovery having no relation to
 13 the claims or issues in this case and which was merely intended to burden and harass Plaintiff HPT
 14 on irrelevant issues and matters that no witnesses or experts have provided any testimony,
 15 information or reference to whatsoever.

16 Nonetheless, on February 15, 2021, HPT provided responses³. *See* Exhibit C. On February
 17 19, 2021⁴, HPT produced over 2300 additional documents. *See* Exhibit D. Another 2 weeks
 18 passed and then, on March 5, 2021, Cannata's counsel directed a 42-page letter to HPT's counsel
 19 alleging that "a significant number of Plaintiff's responses are inadequate and legally insufficient"
 20 and seeking to meet and confer. (Dkt. 101, at 11). This letter has been submitted in support of
 21 Cannata's Motion to Extend as the ostensible illustration of the need for more discovery time.
 22

23 ² The Certificates of Service (only) for Defendant's Second Set of Interrogatories and
 24 Second Set of Requests for Production of Documents are attached hereto as Exhibit B.

25 ³ The cover page and Certificates of Service for HPT's Response to Defendant Kenneth
 26 Cannata's Second Set of Interrogatories and Second Set of Requests for Production are attached
 27 hereto as Exhibit C.

⁴ HPT's counsel's email to Cannata's counsel dated February 19, 2021, and which references
 the shared Dropbox folder containing produced documents marked for identification and Bates-
 stamped HPT-KC000238-0002593 is attached hereto as Exhibit D.

1 (Dkt. 101).

2 Notably, Counsel for Defendant and Counsel for Plaintiff conducted a comprehensive meet
3 and confer conference to discuss these discovery issues on March 15, 2021. At the conclusion of
4 the meet and confer, the more than 80 allegedly deficient answers and responses were substantially
5 narrowed down. Counsel for Defendant advised at the conclusion of the conference that he would
6 provide a correspondence concerning what he viewed to be remaining issues to be. As of the filing
7 of this brief, no such correspondence has been received more than one week since the meet and
8 confer. Not only did Cannata let a year pass before serving the subject supplemental discovery,
9 but the actual discovery related dispute is far more miniscule than the lengthy letter in support of
10 Defendant's Motion would suggest. (Dkt. 101, at 11-52). Even if every single alleged deficiency
11 in HPT's discovery responses remained unresolved and contentious, nothing therein would
12 constitute an "unforeseen or extenuating circumstance" which this Court ordered to be the sole
13 basis upon which discovery would be extended a fourth time.

14 Nothing here was unforeseen. Nothing is extenuating. Nothing raises the requisite good
15 cause for further extension. Plaintiff has not put up any "roadblocks" in discovery in this case.
16 Rather, the sole reason that there is an alleged time crunch with discovery is that Defendant
17 Cannata chose to do in early 2021 what he could have done in early 2020 or at any other time
18 before that. The issues in this case have remained static and known to all parties since late 2018.
19 Defendant Cannata's Motion to Extend should appropriately be denied.

20 WHEREFORE, Plaintiff, HP TUNERS, LLC, respectfully prays for an order DENYING
21 Defendant's Motion to Extend Limited Discovery Deadlines and for such other relief as this Court
22 deems necessary and appropriate.

23 DATED this 23rd day of March, 2021.

24 Respectfully Submitted,

25 LEE HIGH, LTD.

26 /s/ Elizabeth High, Esq.

CECILIA LEE, ESQ.

27 ELIZABETH HIGH, ESQ.

MARKS & KLEIN

/s/ Andrew P. Bleiman, Esq.
ANDREW P. BLEIMAN, ESQ.
Attorneys for Plaintiff HP Tuners, LLC

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b) and Local Rule IC 4-1, I certify under penalty of perjury that I am an employee of LEE HIGH, LTD., 448 Ridge Street, Reno, Nevada 89501, and that on March 23, 2021, I served copies of the Plaintiff's Opposition to Defendant Kenneth Cannata's Motion to Extend Limited Discovery Deadlines by the United States District Court's electronic filing system to the following:

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Attorney for Defendant Kenneth Cannata

DATED this 23rd day of March, 2021.

/s/ Elizabeth Dendary
ELIZABETH DENDARY, CP
Certified Paralegal